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HIGHER NATIONALITY

A STUDY IN LAW AND ETHICS

AN ADDRESS DELIVERED BEFORE THE AMERICAN BAR
ASSOCIATION AT MONTREAL ON SEPTEMBER 1, 1913



BY

VISCOUNT HALDANE OF CLOAN

Lord Chancellor of Great Britain

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The Executive Committee of the Association for International Conciliation wish to arouse the interest of the American people in the progress of the movement for promoting international peace and relations of comity and good fellowship between nations. To this end they print and circulate documents giving information as to the progress of these movements, in order that individual citizens, the newspaper press, and organizations of various kinds may have readily available accurate information on these subjects. A list of publications will be found on page 15.

INTRODUCTORY NOTE

The present paper by the Lord Chancellor of Great Britain is taken from Lord Haldane's extraordinarily significant address before the members of the American Bar Association at Montreal, on September 1, 1913. A special edition containing the entire address has been published by this Association, and copies will be furnished up to the limit of that edition, upon application.

HIGHER NATIONALITY

The law has grown by development through the influence of the opinion of society guided by its skilled advisers. But the law forms only a small part of the system of rules by which the conduct of the citizens of a state is regulated. Law, properly so called, whether civil or criminal, means essentially those rules of conduct which are expressly and publicly laid down by the sovereign will of the state, and are enforced by the sanction of compulsion. Law, however, imports something more than this. As I have already remarked, its full significance cannot be understood apart from the history and spirit of the nation whose law it is. Moreover, it has a real relation to the obligations even of conscience, as well as to something else which I shall presently refer to as the General Will of Society. In short, if its full significance is to be appreciated, larger conceptions than those of the mere lawyer are essential, conceptions which come to us from the moralist and the sociologist, and without which we cannot see fully how the genesis of law has come about. That is where writers like Bentham and Austin are deficient. One cannot read a great book like the *Esprit des Lois* without seeing that Montesquieu had a deeper insight than Bentham or Austin, and that he had already grasped a truth which, in Great Britain at all events, was to be forgotten for a time.

Besides the rules and sanctions which belong to law and legality, there are other rules, with a different kind of sanction, which also influences conduct. I have spoken of conscience, and conscience, in the strict sense of the word, has its own court. But the tribunal of conscience is a private one, and its jurisdiction is limited to the individual whose conscience it is. The moral rules enjoined by the private conscience may be the very highest of all. But they are enforced only by an inward and private tribunal. Their sanction is subjective

and not binding in the same way on all men. The very loftiness of the motive which makes a man love his neighbour more than himself, or sell all his goods in order that he may obey a great and inward call, renders that motive in the highest cases incapable of being made a rule of universal application in any positive form. And so it was that the foundation on which one of the greatest of modern moralists, Immanuel Kant, sought to base his ethical system, had to be revised by his successors. For it was found to reduce itself to little more than a negative and therefore barren obligation to act at all times from maxims fit for law universal, maxims which, because merely negative, turned out to be inadequate as guides through the field of daily conduct. In point of fact that field is covered, in the case of the citizen, only to a small extent by law and legality on the one hand, and by the dictates of the individual conscience on the other. There is a more extensive system of guidance which regulates conduct and which differs from both in its character and sanction. It applies, like law, to all the members of a society alike, without distinction of persons. It resembles the morality of conscience in that it is enforced by no legal compulsion. In the English language we have no name for it, and this is unfortunate, for the lack of a distinctive name has occasioned confusion both of thought and of expression. German writers have, however, marked out the system to which I refer and have given it the name of "Sittlichkeit." In his book, *Der Zweck im Recht*, Rudolph von Jhering, a famous professor at Göttingen, with whose figure I was familiar when I was a student there nearly forty years ago, pointed out, in the part which he devoted to the subject of "Sittlichkeit," that it was the merit of the German language to have been the only one to find a really distinctive and scientific expression for it. "Sittlichkeit" is the system of habitual or customary conduct, ethical rather than legal, which embraces all those obligations of the citizen which it is "bad form" or "not the thing" to disregard. Indeed regard for these obligations is frequently enjoined merely by the social penalty of being "cut" or looked

on askance. And yet the system is so generally accepted and is held in so high regard, that no one can venture to disregard it without in some way suffering at the hands of his neighbours for so doing. If a man maltreats his wife and children, or habitually jostles his fellow-citizens in the street, or does things flagrantly selfish or in bad taste, he is pretty sure to find himself in a minority and the worse off in the end. But not only does it not pay to do these things, but the decent man does not wish to do them. A feeling analogous to what arises from the dictates of his more private and individual conscience restrains him. He finds himself so restrained in the ordinary affairs of daily life. But he is guided in his conduct by no mere inward feeling, as in the case of conscience. Conscience and, for that matter, law overlap parts of the sphere of social obligation about which I am speaking. A rule of conduct may, indeed, appear in more than one sphere, and may consequently have a twofold sanction. But the guide to which the citizen mostly looks is just the standard recognized by the community, a community made up mainly of those fellow-citizens whose good opinion he respects and desires to have. He has everywhere round him an object-lesson in the conduct of decent people towards each other and towards the community to which they belong. Without such conduct and the restraints which it imposes there could be no tolerable social life, and real freedom from interference would not be enjoyed. It is the instinctive sense of what to do and what not to do in daily life and behaviour that is the source of liberty and ease. And it is this instinctive sense of obligation that is the chief foundation of society. Its reality takes objective shape and displays itself in family life and in our other civic and social institutions. It is not limited to any one form, and it is capable of manifesting itself in new forms and of developing and changing old forms. Indeed, the civic community is more than a political fabric. It includes all the social institutions in and by which the individual life is influenced—such as are the family, the school, the church, the legislature, and the executive. None

of these can subsist in isolation from the rest; together they and other institutions of the kind form a single organic whole, the whole which is known as the Nation. The spirit and habit of life which this organic entirety inspires and compels are what, for my present purpose, I mean by "Sittlichkeit." "Sitte" is the German for custom, and "Sittlichkeit" implies custom and a habit of mind and action. It also implies a little more. Fichte¹ defines it in words which are worth quoting, and which I will put into English: "What, to begin with," he says, "does 'Sitte' signify, and in what sense do we use the word? It means for us, and means in every accurate reference we make to it, those principles of conduct which regulate people in their relations to each other, and which have become matter of habit and second nature at the stage of culture reached, and of which, therefore, we are not explicitly conscious. Principles, we call them, because we do not refer to the sort of conduct that is casual or is determined on casual grounds, but to the hidden and uniform ground of action which we assume to be present in the man whose action is not deflected and from which we can pretty certainly predict what he will do. Principles, we say, which have become a second nature and of which we are not explicitly conscious. We thus exclude all impulses and motives based on free individual choice, the inward aspect of 'Sittlichkeit,' that is to say morality, and also the outward side, or law, alike. For what a man has first to reflect over and then freely to resolve is not for him a habit in conduct; and in so far as habit in conduct is associated with a particular age, it is regarded as the unconscious instrument of the Time Spirit."

The system of ethical habit in a community is of a dominating character, for the decision and influence of the whole community is embodied in that social habit. Because such conduct is systematic and covers the whole of the field of society, the individual will is closely related by it to the will and spirit of the community. And out of this relation arises the power of adequately

¹*Grundzüge des Gegenwärtigen Zeitalters, Werke, Band vii., p. 214.*

controlling the conduct of the individual. If this power fails or becomes weak the community degenerates and may fall to pieces. Different nations excel in their "Sittlichkeit" in different fashions. The spirit of the community and its ideals may vary greatly. There may be a low level of "Sittlichkeit"; and we have the spectacle of nations which have even degenerated in this respect. It may possibly conflict with law and morality, as in the case of the duel. But when its level is high in a nation we admire the system, for we see it not only guiding a people and binding them together for national effort, but affording the greatest freedom of thought and action for those who in daily life habitually act in harmony with the General Will.

Thus we have in the case of a community, be it the city or be it the state, an illustration of a sanction which is sufficient to compel observance of a rule without any question of the application of force. This kind of sanction may be of a highly compelling quality, and it often extends so far as to make the individual prefer the good of the community to his own. The development of many of our social institutions, of our hospitals, of our universities, and of other establishments of the kind, shows the extent to which it reaches and is powerful. But it has yet higher forms in which it approaches very nearly to the level of the obligation of conscience, although it is distinct from that form of obligation. I will try to make clear what I mean by illustrations. A man may be impelled to action of a high order by his sense of unity with the society to which he belongs, action of which, from the civic standpoint, all approve. What he does in such a case is natural to him, and is done without thought of reward or punishment; but it has reference to standards of conduct set up by society and accepted just because society has set them up. There is a poem by the late Sir Alfred Lyall which exemplifies the high level that may be reached in such conduct. The poem is called *Theology in Extremis*, and it describes the feelings of an Englishman who had been taken prisoner by Mahometan rebels in the Indian Mutiny. He is face to face with a cruel death. They offer

him his life if he will repeat something from the Koran. If he complies, no one is likely ever to hear of it, and he will be free to return to England and to the woman he loves. Moreover, and here is the real point, he is not a believer in Christianity, so that it is no question of denying his Saviour. What ought he to do? Deliverance is easy, and the relief and advantage would be unspeakably great. But he does not really hesitate, and every shadow of doubt disappears when he hears his fellow-prisoner, a half-caste, pattering eagerly the words demanded.

He himself has no hope of heaven and he loves life—

“Yet for the honour of English race
May I not live or endure disgrace.
Ay, but the word if I could have said it,
I by no terrors of hell perplex.
Hard to be silent and have no credit
From man in this world, or reward in the next;
None to bear witness and reckon the cost
Of the name that is saved by the life that is lost.
I must begone to the crowd untold
Of men by the cause which they served unknown,
Who moulder in myriad graves of old;
Never a story and never a stone
Tells of the martyrs who die like me
Just for the pride of the old countree.”

I will take another example, this time from the literature of ancient Greece.

In one of the shortest but not least impressive of his *Dialogues*, the “Crito,” Plato tells us of the character of Socrates, not as a philosopher, but as a good citizen. He has been unjustly condemned by the Athenians as an enemy to the good of the state. Crito comes to him in prison to persuade him to escape. He urges on him many arguments, his duty to his children included. But Socrates refuses. He chooses to follow, not what anyone in the crowd might do, but the example which the ideal citizen should set. It would be a breach of his duty to fly from the judgment duly passed in the Athens to which he belongs, even though he thinks the decree

should have been different. For it is the decree of the established justice of his City State. He will not "play truant." He hears the words, "Listen, Socrates, to us who have brought you up"; and in reply he refuses to go away, in these final sentences: "This is the voice which I seem to hear murmuring in my ears, like the sound of the flute in the ears of the mystic; that voice, I say, is murmuring in my ears, and prevents me from hearing any other. And I know that anything more which you may say will be vain."

Why do men of this stamp act so, it may be when leading the battle line, it may be at critical moments of quite other kinds? It is, I think, because they are more than mere individuals. Individual they are, but completely real, even as individual, only in their relation to organic and social wholes in which they are members, such as the family, the city, the state. There is in every truly organised community a Common Will which is willed by those who compose that community, and who in so willing are more than isolated men and women. It is not, indeed, as unrelated atoms that they have lived. They have grown, from the receptive days of childhood up to maturity, in an atmosphere of example and general custom, and their lives have widened out from one little world to other and higher worlds, so that, through occupying successive stations in life, they more and more come to make their own the life of the social whole in which they move and have their being. They cannot mark off or define their own individualities without reference to the individualities of others. And so they unconsciously find themselves as in truth pulse-beats of the whole system, and themselves the whole system. It is real in them and they in it. They are real only because they are social. The notion that the individual is the highest form of reality, and that the relationship of individuals is one of mere contract, the notion of Hobbes and of Bentham and of Austin, turns out to be quite inadequate. Even of an every-day contract, that of marriage, it has been well said that it is a contract to pass out of the sphere of contract, and that it is possible only because the contracting parties

are already beyond and above that sphere. As a modern writer, F. H. Bradley of Oxford, to whose investigations in these regions we owe much, has finely said :¹

"The moral organism is not a mere animal organism. In the latter the member is not aware of itself as such, while in the former it knows itself, and therefore knows the whole in itself. The narrow external function of the man is not the whole man. He has a life which we cannot see with our eyes, and there is no duty so mean that it is not the realisation of this, and knowable as such. What counts is not the visible outer work so much as the spirit in which it is done. The breadth of my life is not measured by the multitude of my pursuits, nor the space I take up amongst other men ; but by the fulness of the whole life which I know as mine. It is true that less now depends on each of us as this or that man ; it is not true that our individuality is therefore lessened, that therefore we have less in us."

There is, according to this view, a General Will with which the will of the good citizen is in accord. He feels that he would despise himself were his private will not in harmony with it. The notion of the reality of such a will is no new one. It is as old as the Greeks, for whom the moral order and the city state were closely related ; and we find it in modern books in which we do not look for it. Jean Jacques Rousseau is probably best known to the world by the famous words in which he begins the first chapter of the *Social Contract* : "Man is born free, and everywhere he is in chains. Those who think themselves to be the masters of others cease not to be greater slaves than the people they govern." He goes on in the next paragraph to tell us that if he were only to consider force and the effects of it, he would say that if a nation was constrained to obey and did obey, it did well, but that whenever it could throw off its yoke and did throw it off, it acted better. His words, written in 1762, became a text for the pioneers of the French Revolution. But they would have done well to read further into the book. As Rousseau goes on we find

¹*Ethical Studies*, p. 131.

a different conception. He passes from considering the fiction of a Social Contract to a discussion of the power over the individual of the General Will, by virtue of which a people becomes a people. This General Will, the *Volonté Générale*, he distinguishes from the *Volonté de Tous*, which is a mere numerical sum of individual wills. These particular wills do not rise above themselves. The General Will, on the other hand, represents what is greater than the individual volition of those who compose the society of which it is the will. On occasions, this higher will is more apparent than at other times. But it may, if there is social slackness, be difficult to distinguish from a mere aggregate of voices, from the will of a mob. What is interesting is that Rousseau, so often associated with doctrine of quite another kind, should finally recognise the bond of a General Will as what really holds the community together. For him, as for those who have had a yet clearer grasp of the principle, in willing the General Will we not only realise our true selves but we may rise above our ordinary habit of mind. We may reach heights which we could not reach, or which at all events most of us could not reach, in isolation. There are few observers who have not been impressed with the wonderful unity and concentration of purpose which an entire nation may display—above all, in a period of crisis. We see it in time of war, when a nation is fighting for its life or for a great cause. We have seen it in Japan, and we have seen it still more recently among the peoples of the Balkan Peninsula. We have marvelled at the illustrations with which history abounds of the General Will rising to heights of which but few of the individual citizens in whom it is embodied have ever before been conscious even in their dreams.

In his life of Themistocles Plutarch tells us how even in time of peace the leader of the Athenian people could fashion them into an undivided community and inspire them to rise above themselves. It was before the Persians had actually threatened to invade Attica that Themistocles foresaw what would come. Greece could not raise armies comparable in numbers to those of

the Persian kings. But he told his people that the oracle had spoken thus: "When all things else are taken within the boundary of Cecrops and the covert of divine Cithaeron, Zeus grants to Athena that the wall of wood alone shall remain uncaptured, which shall help thee and thy children." The Athenian citizens were accustomed in each year to divide among themselves the revenue of their silver mines at Laurium. Themistocles had the daring, so Plutarch tells us, to come forward and boldly propose that the usual distribution should cease, and that they should let him spend the money for them in building a hundred ships. The citizens rose to his lead, the ships were built, and with them the Greeks were able at a later date to win against Xerxes the great sea-fight at Salamis, and to defeat an invasion by the hosts of Persia which, had it succeeded, might have changed the course of modern as well as ancient history.

By such leadership it is that a common ideal can be made to penetrate the soul of a people, and to take complete possession of it. The ideal may be very high, or it may be of so ordinary a kind that we are not conscious of it without the effort of reflection. But when it is there it influences and guides daily conduct. Such idealism passes beyond the sphere of law, which provides only what is necessary for mutual protection and liberty of just action. It falls short, on the other hand, in quality of the dictates of what Kant called the Categorical Imperative that rules the private and individual conscience, but that alone, an Imperative which therefore gives insufficient guidance for ordinary and daily social life. Yet the ideal of which I speak is not the less binding; and it is recognised as so binding that the conduct of all good men conforms to it.

Thus we find within the single state the evidence of a sanction which is less than legal but more than merely moral, and which is sufficient, in the vast majority of the events of daily life, to secure observance of general standards of conduct without any question of resort to force. If this is so within a nation, can it be so as between nations? That brings me at once to my third

point. Can nations form a group or community among themselves within which a habit of looking to common ideals may grow up sufficiently strong to develop a General Will, and to make the binding power of these ideals a reliable sanction for their obligations to each other?

There is, I think, nothing in the real nature of nationality that precludes such a possibility. A famous student of history has bequeathed to us a definition of nationality which is worth attention; I refer to Ernest Renan, of whom George Meredith once said to me, while the great French critic was still living, that there was more in his head than in any other head in Europe. Renan tells us that "Man is enslaved neither by his race, nor by his language, nor by his religion, nor by the course of rivers, nor by the direction of mountain ranges. A great aggregation of men, sane of mind and warm of heart, creates a moral consciousness which is called a nation." Another acute critic of life, Matthew Arnold, citing one still greater than himself, draws what is in effect a deduction from the same proposition. "Let us," he says,¹ "conceive of the whole group of civilised nations as being, for intellectual and spiritual purposes, one great confederation, bound to a joint action and working towards a common result; a confederation whose members have a due knowledge both of the past, out of which they all proceed, and of each other. This was the ideal of Goethe, and it is an ideal which will impose itself upon the thoughts of our modern societies more and more."

But while I admire the faith of Renan and Arnold and Goethe in what they all three believed to be the future of humanity, there is a long road yet to be travelled before what they hoped for can be fully accomplished. Grotius concludes his great book on War and Peace with a noble prayer: "May God write," he said, "these lessons—He Who alone can—on the hearts of all those who have the affairs of Christendom in their hands. And may He give to those persons a

¹ *Preface to the Poems of Wadsworth.*

mind fitted to understand and to respect rights, human and divine, and lead them to recollect always that the ministration committed to them is no less than this, that they are the Governors of Man, a creature most dear to God."

The prayer of Grotius has not yet been fulfilled, nor do recent events point to the fulfilment being near. The world is probably a long way off from the abolition of armaments and the peril of war. For habits of mind which can be sufficiently strong with a single people can hardly be as strong between nations. There does not exist the same extent of common interest, of common purpose, and of common tradition. And yet the tendency, even as between nations that stand in no special relation to each other, to develop such a habit of mind is in our time becoming recognisable. There are signs that the best people in the best nations are ceasing to wish to live in a world of mere claims, and to proclaim on every occasion, "Our country, right or wrong." There is growing up a disposition to believe that it is good, not only for all men but for all nations, to consider their neighbours' point of view as well as their own. There is apparent at least a tendency to seek for a higher standard of ideals in international relations. The barbarism which once looked to conquest and the waging of successful war as the main object of statesmanship, seems as though it were passing away. There have been established rules of International Law which already govern the conduct of war itself, and are generally observed as binding by all civilised people, with the result that the cruelties of war have been lessened. If practice falls short of theory, at least there is to-day little effective challenge of the broad principle that a nation has as regards its neighbours' duties as well as rights. It is this spirit that may develop as time goes on into a full international "Sittlichkeit."

LIST OF PUBLICATIONS

Nos. 1-54, inclusive (April, 1907, to May, 1912). Including papers by Baron d'Estournelles de Constant, George Trumbull Ladd, Elihu Root, Barrett Wendell, Charles E. Jefferson, Seth Low, William James, Andrew Carnegie, Philander C. Knox, Pope Pius X, Heinrich Lammasch, Norman Angell, and others. A list of titles and authors will be sent on application.

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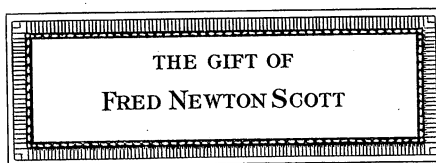
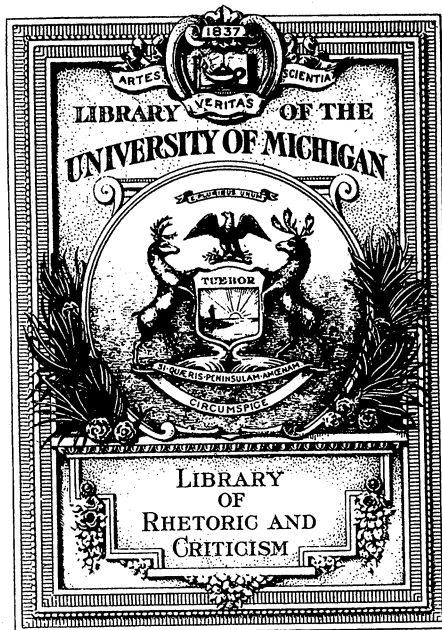
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